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8 David Martinez

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 United States of America,  
13 Plaintiff,

14 vs.

15 David Martinez  
16 Defendant  
17  
18

Case No.: CR 10-00824-6 DLJ

**[PROPOSED] PROTECTIVE  
ORDER FOR RE-TESTING OF  
DRUG EXHIBIT BY DEFENSE  
CHEMIST**

19  
20 Based upon a stipulation of the parties, and pursuant to Federal Rule of Criminal  
21 Procedure 16(a)(1)(E), the Court ORDERS as follows:

22 The Government shall allow the defense: (1) to independently inspect the below-listed  
23 drug exhibits:

<u>DEA Exhibit Number</u>	<u>DEA Laboratory Number</u>
24 600	7160576
25 601	7160577

26 as reported in the Drug Enforcement Administration (DEA) Laboratory Reports, DEA Case  
27 number RC-08-0043; (2) to collect and analyze a representative sample from the above-listed  
28 exhibits to determine its weight, nature, and strength or purity; and (3) to inspect and analyze the

**FILED**

OCT 25 2011

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

1 composite representative samples (if any) previously collected and analyzed by the DEA to  
2 determine their weight, nature, and strength or purity, to the extent that said samples have not  
3 been consumed during testing; and

4 IT IS FURTHER ORDERED that a DEA Special Agent or Task Force Officer shall  
5 deliver the drug exhibits and DEA composite representative samples (if any) identified above to  
6 Alejandro Corona, DEA License No. RF0193778, of Forensic Analytical Laboratories, Inc.,  
7 located at 3777 Depot Road, Suite 403, Hayward, California. The DEA Western Laboratory  
8 shall arrange the delivery of said exhibits no later than ten days after this Order is signed to the  
9 DEA Special Agent or Task Force Officer for delivery to Alejandro Corona of Forensic  
Analytical Laboratories, Inc.; and

10 IT IS FURTHER ORDERED that upon delivery of the exhibits identified above to the  
11 defense expert, that an DEA Special Agent or Task Force Officer shall be present when the  
12 defense expert inspects, weighs, and removes a representative sample from each of the exhibits  
13 identified above for analysis. The representative sample shall be in the amount of 250 mg from  
14 each of the above-described exhibits. The weight of the representative sample taken shall be  
15 documented and signed by the defense expert and provided to the DEA Special Agent or Task  
16 Force Officer in attendance. Upon the completion of the sample removal and weighing, the  
17 defense expert shall forthwith return the remaining above-listed exhibits to the DEA Agent or  
Task Force Officer in attendance; and

18 IT IS FURTHER ORDERED that the defense expert shall conduct the qualitative and  
19 quantitative analysis (calculated as the hydrochloride salt form) and identification ordered herein,  
20 and shall provide the Government with an Unsworn Declaration Under Penalty of Perjury, under  
21 28 U.S.C. § 1746, executed by the individual who conducted the analysis, or the head of the  
22 facility where the analysis occurred, which states the quantity of the exhibits consumed during  
23 testing, and either the weight of the exhibits returned to the Government, or a statement that all  
24 of the sample was consumed during testing; and


25 IT IS FURTHER ORDERED that all remaining material of the samples, after testing, is  
26 to be returned by Alejandro Corona of Forensic Analytical Laboratories, Inc. to Michael K.  
27 Robinson, Special Agent, DEA San Jose Resident Office One North First Street, Suite 405  
San Jose, CA 95113, within five (5) business days after the completion of analysis; and

28 IT IS FURTHER ORDERED, in accordance with Federal Rule of Criminal Procedure

1 16(b)(1)(B), that the defendant shall promptly provide the Government with a copy of the results  
2 or report of the physical examinations and scientific tests or experiments which resulted from the  
3 analysis conducted under this Order in the event that the defendant intends to use the results or  
4 report in the defendant's case-in-chief at trial or in sentencing; and

5 IT IS FURTHER ORDERED that Alejandro Corona of Forensic Analytical Laboratories,  
6 Inc. is to safeguard the representative samples received, preserving the chain of custody in a  
7 manner to faithfully protect the integrity of each exhibit received.

8 Dated: October 25, 2011

  
United States District Court Judge  
Northern District of California

11 APPROVED AS TO FORM:

14 DATED \_\_\_\_\_

\_\_\_\_\_  
/S/  
GRAHAM ARCHER  
Attorney for Defendant David Martinez

17 DATED \_\_\_\_\_

\_\_\_\_\_  
/S/  
THOMAS COLTHURST  
Assistant United States Attorney